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LETTER DATED 20 APRIL 1993 FROM THE PERMANENT
REPRESENTATIVE OF SLOVENIA TO THE UNITED
NATIONS ADDRESSED TO THE SECRETARY-GENERAL

Pursuant to paragraph 2 of the Security Council resolution 808 (1993), I would like to transmit, enclosed herewith, the letter from H.E. Mr. Lojze Peterle, Minister for Foreign Affairs of Slovenia, dated 16 April 1993, addressed to the Secretary-General, expressing the views of Slovenia with regard to the establishment of an ad hoc international tribunal for war crimes committed on the territory of some States in the region of the former Socialist Federal Republic of Yugoslavia.

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(Signed) Danilo TÜRK
Permanent Representative

Annex

Letter dated 16 April 1993 from the Minister for Foreign
Affairs of Slovenia addressed to the Secretary-General

Pursuant to paragraph 2 of Security Council resolution 808 (1993), dated 22 February 1993, I should like to report on certain views that Slovenia holds with regard to the establishment of an ad hoc international tribunal for war crimes committed in the territory of some States created in the region of the former Socialist Federal Republic of Yugoslavia.

As I have already made clear in my letter of 26 February 1993, Slovenia supports the establishment of such a tribunal, which would prosecute those responsible for grave war crimes committed in the territories of Bosnia and Herzegovina and Croatia. My Government is convinced that the establishment of such a tribunal is a necessary and very important step, given the fact that those responsible for such crimes would be judged by an impartial judicial body as well as the fact that it could also contribute positively to the finding of solutions for the restoration of peace in the above-mentioned regions. In connection with the resolution and the material which has been prepared on the founding of the tribunal and which my Government has studied (proposals of France (S/25266), Italy (S/25300) and Sweden, on behalf of the Conference on Security and Cooperation in Europe (S/25307)), I should like to inform you of certain suggestions and comments of my Government.

The idea of the establishment of the tribunal has arisen because of the grave, systematic and mass violations of international humanitarian law, violations which have been committed and are still being committed in the territories of Bosnia and Herzegovina and Croatia. Slovenia is not involved in the present conflict in the territory of the aforementioned States. It is true that a few days of armed conflict occurred in Slovenia at the end of June 1991 as a result of the aggression of the Yugoslav People's Army, but the dimensions of this are not comparable with what is happening in the two above-mentioned States. In addition to Slovenia, the former Yugoslav Republic of Macedonia is not nor has been involved in these conflicts and has suffered no armed conflicts in its own territory. We are of the opinion that these facts are not sufficiently reflected in resolution 808 (1993), nor in the aforementioned documents.

These documents continuously speak of crimes committed in the territory of former Yugoslavia. Thus the territorial jurisdiction of the future international court is also determined as being for the entire territory of former Socialist Federal Republic of Yugoslavia.

We think that it would be more logical for the facts noted above to be reflected also in the territorial jurisdiction of the proposed tribunal, so that it would be limited to those regions where mass and grave breaches of humanitarian law and law of armed conflicts have actually taken place and are continuing, for which reason the court is being established, at which point it would also be worth adding that these crimes have been committed after the dissolution of the former Socialist Federal Republic of Yugoslavia. The purpose of these comments is not for Slovenia to avoid the jurisdiction of the tribunal

but for us to express our desire that the tribunal's jurisdiction is balanced more with the actual state of affairs.

I should like to once again assure you that Slovenia will cooperate most surely and fully with the tribunal, even if the Security Council decides on some other territorial jurisdiction than the one here proposed. In such a case we would expect our suggestions to find an appropriate place in your report, which will be prepared in accordance with paragraph 2 of the resolution, as well as in the documents which will define the work of the future tribunal in greater detail.

In certain materials, 25 June 1991 is proposed as the starting date for the jurisdiction of the international tribunal. This is the day independence was declared in Slovenia as well as in Croatia. We would like to stress that this day was not associated with any kind of violence, that the declaration of independence was a peaceful act and that this was not an act aimed against anybody. Given this, we are of the opinion that this date is most unsuitable to be linked with the establishment of the tribunal for war crimes.

More suitable would be dates when conflicts arose which mark the beginning of war in the aforementioned States created on the territory of the former Socialist Federal Republic of Yugoslavia. A different approach could also be possible, that is, that the preparations for war are taken into consideration (the sabre-rattling of politicians in Serbia, violence in Kosovo) by way of analogy with the solutions at the trials in Nürnberg in respect of the responsibilities of the political leaders of the Third Reich for making war.

With regard to the jurisdiction of the tribunal ratione materiae, we are of the opinion that it should be limited only to those grave breaches committed en masse and systematically. Other violations would fall under the competence of national legislation or courts.

In our opinion the principle of legality (nullum crimen nulla poena sine lege) would be most consistently served if the international court applied the provisions of chapter XVI of the Penal Code of the former Socialist Federal Republic of Yugoslavia in the text which was enacted in July 1990. These provisions are in total accordance both with the valid international law governing genocide as well as war crimes and crimes against humanity. Such a course of action is also envisaged in the Swedish proposal, but the authors themselves recognize that they have not been able to study carefully the provisions of the penal code and thus a few changes will have to be suggested. We propose that the international court applies the following articles: 141, genocide; 142, war crimes against the civilian population; 143, war crimes against the wounded and sick (which the Swedish proposal does not mention); 144, war crimes against prisoners-of-war; and 145, organizing groups for and inciting to genocide and war crimes, which includes the policy-makers, the designers of and implementers of plans for executing war crimes, conspiracy, etc.). Apart from this, the following criminal acts would fall within the jurisdiction of the international tribunal: article 148, use of prohibited means of war; article 152, destruction of cultural and historical monuments; and article 152, inciting to military aggression.

The provisions of chapter XVI also differentiate between grave breaches, which are included in the above-mentioned articles, and other criminal acts which are not committed en masse and systematically. The latter are incriminated in the following provisions of this law: article 146, illegal killing and causing of wounds to the enemy; article 147, illegal confiscation of possessions of those killed and wounded in the battlefield; article 148, use of prohibited means of war, if such acts are not committed en masse and systematically; article 149, violation of parliamentary rights; article 150, brutality towards the wounded, patients and prisoners-of-war, if such acts are not committed en masse and systematically.

The above-stated provisions of the Penal Code of the former Socialist Federal Republic of Yugoslavia are valid law in all the States that have been created in the territory of former Yugoslavia. All these States have in their Acts of Independence, in one way or another, and with certain restrictions and appropriate adaptations, accepted the previously valid penal code, but such restrictions do not refer to the above-mentioned acts. The only exception here is the death penalty, which in some States, including Slovenia, has been abolished, but not in Bosnia and Herzegovina. We are of the opinion that this should not be an obstacle to the application of the aforementioned valid legislation, while the international legal document on the establishment of the court could determine the highest and lowest sentence of imprisonment.

We trust that our suggestions and comments will contribute to the most appropriate mandate of the international tribunal and to its effectiveness.

(Signed) Lojze PETERLE
Minister for Foreign Affairs
